

REMARKS

The application has been amended and is believed to be in condition for allowance.

There are no outstanding formal matters.

Claim 5 has been incorporated into claim 1.

New claims have been added which correspond to the recited invention, find support in the specification as files and as illustrated in the drawings. No new matter is entered by way of this amendment.

Claims 1-4 were rejected as anticipated by WERNER 3,303,584. As Claim 5 has been incorporated into claim 1, his rejection is moot.

Claims 1-8 were rejected as anticipated by JOSEPH 2002/0088146.

Claims 9-11 were rejected as obvious over JOSEPH.

Claims 1-11 were provisionally rejected on the ground of nonstatutory double patenting over the claims of copending Application No. 10/518631.

A terminal disclaimer is not believed necessary. The rejection states that the nonstatutory double patenting is appropriate when the claims are not patentably distinct. The analysis is as to the two claim sets, not the disclosed subject matter of the two applications.

Claim 1 now recites:

- the articulation of the first footwear article and the articulation of the second footwear article each comprise two elastically deformable members (14, 14') symmetrically arranged in relation to the upward direction (10), and

- each elastically deformable member comprises two ribs (16, 18; 116, 118; 216, 218) which are substantially inwardly curved and positioned opposite each other.

These features are not recited in the claim set of copending Application No. 10/518631. Thus, the claims are patentably distinct and the nonstatutory double patenting is not appropriate. Withdrawal of the rejection is therefore solicited.

The Claimed Invention vs. JOSEPH

JOSEPH does not anticipate. To anticipate, each feature recited by the claim(s) must be found in the applied reference. "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

It is noted that responding to the rejection is made difficult because the claim recitations are not read onto the reference. In any future rejection, it is respectfully requested that each claim recitation be read onto the applied art, with clear identification of what prior art elements are believed to satisfy each recitation.

Claim 1 requires a set of footwear, each piece of footwear comprising first and second rigid shells connected by an articulation. However, unlike the prior art, the invention provides, Claim 1 recites, a first footwear article (1) for the practice of a first sport, and a second footwear article (101) also intended for the practice of a second sport. In general, the invention improves the protection and comfort of users, and increases the production volumes of such articles. In order to do this the invention provides for the provision of a set of articulations having different mechanical resistance characteristics to adjust to the physiological differences between the users of such footwear articles and/or differences between the sports for which the footwear articles may be used.

Applicants do not find that JOSEPH teaches or suggests such a set.

See Figure 9 illustrating a boot 101 intended for the practice of roller blading, after it has been fixed to a base bearing a number of rollers. Boot 101 is essentially distinguished from boot 1 in that ribs 116, 118 in each of the articulation structures have a cross-section and in particular here a thickness e (which is substantially constant) substantially less than the thickness E of ribs 16, 18. Thus the flexing force of boot 101 is less than that of boot 1. The material of the ribs may also be changed to alter the flexion modulus of the boot, using carbon for example instead of a

plastics material. Top 104 of boot 101 is substantially shortened in comparison with top 4 of boot 1 in that protection for roller blading does not need to cover a large part of the leg.

Returning to claim 1, see the recitations "a first rigid shell defining a body (2) intended to receive the foot of a first user and extending in a longitudinal direction (8)," "a second rigid shell defining a top (4) intended to receive the leg of the user and substantially extending in an upward direction (10)" and "an articulation (6) connecting the body and the top having specific mechanical resistance characteristics".

Additionally, claim 1 requires the mechanical characteristics of the articulation (6) of the first footwear article (1) and the mechanical characteristics of the articulation (106) of the second footwear article (101) are substantially different in order to correspond to the physiological differences between the first and second user and/or differences between the first and second sport. Applicants do not find that JOSEPH teaches or suggests this feature.

Further, claim 1 requires the articulation of the first footwear article and the articulation of the second footwear article each comprise two elastically deformable members (14, 14') symmetrically arranged in relation to the upward direction (10), where each elastically deformable member comprises two ribs (16, 18; 116, 118; 216, 218) which are substantially inwardly

curved and positioned opposite each other. Applicants also do not find that JOSEPH teaches or suggests this feature.

The boots of JOSEPH do not show such elastically deformable members, i.e., two elastically deformable members, each comprising two ribs which are substantially inwardly curved and positioned opposite each other.

As to claim 6, Applicants also do not find that JOSEPH teaches that the ribs (16, 18) of the first footwear article (1) and the ribs (116, 118) of the second footwear article (101) are made of different materials.

As to claim 7, Applicants also do not find that JOSEPH teaches that the ribs (16, 18) of the first footwear article (1) and the ribs (116, 118) of the second footwear article (101) have different cross-sections (E, e).

As to claim 8, Applicants also do not find that JOSEPH teaches that the two elastically deformable members (14, 14') for each footwear article have different mechanical characteristics.

Absent these disclosures, the claims cannot be said to be anticipated.

As to the obviousness rejection, applicant has disclosed that the recited ranges provide advantages results. The record does not show that these recited features are "general conditions disclosed in the prior art" that would generally be known to be result-effective variables subject to routine

optimization. Therefore, the obviousness rejection should be withdrawn.

As to claim 9, see at least page 6, disclosing In order to increase protection of the user according to another advantageous feature, the upward direction and the longitudinal direction defining a median plane, the footwear article will also comprise stops to limit the amplitude of rotation in the median plane to a value of between 50 degrees and 60 degrees. This will make it possible to avoid trauma or injuries while permitting great freedom of movement.

As to claim 11, see also on page 6, that Translational movement of the axis of the articulations in relation to the body, if of small amplitude, advantageously between 5 millimetres and 15 millimetres, will nevertheless provide freedom of movement while effectively holding the user's ankle.

The present rejection does not show that these recited features are parameters that would be obvious to optimize and the rejection should therefore be withdrawn.

The new claims are also believed patentable in that the recited features are not disclosed/suggested in the combination recited.

Allowance of all the claims is solicited.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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